

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ROGER PIERCE,  
Plaintiff,  
v.

PATRICE MORGAN and  
KENDALL THOMSON,  
Defendants.

Case No. 22-12786

F. Kay Behm  
United States District Judge

Curtis Ivy, Jr.  
United States Magistrate Judge

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**REPORT AND RECOMMENDATION: RULE 41(b) DISMISSAL**

**I. PROCEDURAL HISTORY**

Plaintiff Roger Pierce filed this *pro se* prisoner civil rights complaint on November 17, 2022. (ECF No. 1). He was given notice of his responsibility to notify the Court of address changes. (ECF No. 3). That notice warned that failure to do so could result in dismissal of his case. The case was then referred to the undersigned for all pretrial matters. (ECF No. 16). Afterward Plaintiff filed an amended complaint on February 28, 2023. (ECF No. 20).

During September 2024, the Court issued an order amending the case caption. (ECF No. 92). That order was returned to the Court as undeliverable with a note on the envelope that Plaintiff was no longer housed at the Washtenaw County Jail. (ECF No. 94). The Court then issued an order for Plaintiff to show cause why his case should not be dismissed for failure to prosecute given the

failure to keep his address updated. (ECF No. 96). The Court warned that failure to respond would result in a recommendation that his case be dismissed for failure to update his address and/or for failure to prosecute under Fed. R. Civ. P. 41(b). His response was due on or before December 4, 2024. (*Id.* at PageID.1120). That order was also returned as undeliverable because Plaintiff is no longer in jail. (ECF No. 97).

Plaintiff has not responded to the Order to show cause nor updated his address. For these reasons, the undersigned **RECOMMENDS** that the case be dismissed for failure to prosecute.

## **II. ANALYSIS AND RECOMMENDATIONS**

Pursuant to Fed. R. Civ. P. 41(b), a federal court may sua sponte dismiss a claim for failure to prosecute or comply with an order. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-32 (1962); *Steward v. City of Jackson*, 8 F. App'x 294, 296 (6th Cir. 2001). “[D]istrict courts possess broad discretion to sanction parties for failure to comply with procedural requirements.” *Tetro v. Elliot Popham Pontiac, Oldsmobile, Buick, and GMC Trucks, Inc.*, 173 F.3d 988, 991 (6th Cir. 1991) (citing *Carver v. Bunch*, 946 F.2d 451, 453 (6th Cir. 1991)). Indeed, the “authority of a federal trial court to dismiss a plaintiff’s action with prejudice because of his failure to prosecute cannot seriously be doubted.” *Link*, 370 U.S. at 629-630. “The power to invoke this sanction is necessary in order to prevent undue delays in

the disposition of pending cases and to avoid congestion in the calendars of the District Courts.” *Id.* Also, a “district court can dismiss an action for noncompliance with a local rule . . . if the behavior of the noncomplying party rises to the level of a failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure.” *Tetro*, 173 F.3d at 992.

It is true that “district courts should be especially hesitant to dismiss for procedural deficiencies where, as here, the failure is by a *pro se* litigant.” *White*, 2008 WL 2216281, at \*5 (quoting *Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir. 1996)). But a sua sponte dismissal may be justified by a plaintiff’s “apparent abandonment of [a] case.” *Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991); *White*, 2008 WL 2216281, at \*5 (citing *Washington v. Walker*, 734 F.2d 1237, 1240 (7th Cir. 1984)); *see also Labreck*, 2013 WL 511031, at \*2.

The Sixth Circuit considers four factors in reviewing the decision of a district court to dismiss a case for failure to prosecute:

(1) whether the party’s failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party’s conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal.

*Wu v. T.W. Wang, Inc.*, 420 F.3d 641, 643 (6th Cir. 2005) (citing *Knoll v. American Tel. & Tel. Co.*, 176 F.3d 359, 363 (6th Cir. 1999)). Here, on balance, these factors weigh in favor of dismissal.

As for the first and second factors, “it is not clear whether plaintiff’s failure to prosecute is due to willfulness, bad faith, or fault.” *White v. Bouchard*, 2008 WL 2216281, at \*5 (E.D. Mich. May 27, 2008). But “defendants cannot be expected to defend an action” that Plaintiff has “apparently abandoned, not to mention the investment of time and resources expended to defend this case.” *Id.* For these reasons, the first and second factors weigh in favor of dismissal.

Based on the warnings given to Plaintiff, the third factor also weighs in favor of dismissal. This Court has regularly dismissed cases under Rule 41(b) after a plaintiff has been warned of dismissal, failed to comply with court orders without explanation, and where defendants expended resources on an abandoned action, and lesser sanctions would prove useless. *See e.g., Croton v. Recker*, 2012 WL 3888220, at \*2 (E.D. Mich. Sept. 7, 2012); *Labreck v. U.S. Dep’t of Treasury*, 2013 WL 511021, at \*2 (E.D. Mich. Jan. 25, 2013) (recommending dismissal for plaintiff’s failure to comply with orders of the court), *report and recommendation adopted*, 2013 WL 509964 (E.D. Mich. Feb. 12, 2013). Plaintiff here failed to respond several times.

Additionally, a Rule 41(b) dismissal is an appropriate sanction for a *pro se* litigant’s failure to provide the court with information related to their current address. *Watsy v. Richards*, 1987 WL 37151 (6th Cir. 1987); *White v. City of Grand Rapids*, 34 F. App’x 210, 211 (6th Cir. 2002) (finding that *pro se* prisoner’s

complaint “was subject to dismissal for want of prosecution because he failed to keep the district court apprised of his current address”); *Rogers v. Ryan*, 2017 WL 5150884, at \*2 (E.D. Mich. Nov. 7, 2017) (“A Rule 41(b) dismissal is an appropriate sanction for a *pro se* litigant’s failure to provide the court with information regarding his current address”). In its Orders regarding the failure to update his address, the Court explicitly warned Plaintiff that the case could be dismissed. Despite this clear warning, Plaintiff has provided no good reason why the undersigned should not recommend the complaint be dismissed. *See Labreck*, 2013 WL 511021 \*2.

Finally, given Plaintiff’s failure to respond to the Court’s Order to show cause, the undersigned sees no utility in considering or imposing lesser sanctions. Thus, taken together, these factors support dismissal for failure to prosecute.

For these reasons, the undersigned concludes that Plaintiff has effectively abandoned his case by failure to update his address and failure to respond to the Court’s Orders. Under these circumstances, dismissal with prejudice is appropriate.

### **III. RECOMMENDATION**

For the reasons set forth above, the undersigned **RECOMMENDS** that Plaintiff’s amended complaint be **DISMISSED** with prejudice under Fed. R. Civ. P. 41(b).

The parties here may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec’y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed’n of Teachers Loc. 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Any objections must be labeled as “Objection No. 1,” “Objection No. 2,” etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed. R. Civ. P. 72(b)(2), Local Rule 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as “Response to Objection No. 1,” “Response to Objection No. 2,” etc. If the Court determines that any objections lack merit, it may rule without awaiting the response.

Date: December 16, 2024.

s/Curtis Ivy, Jr.

Curtis Ivy, Jr.

United States Magistrate Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that this document was served on counsel of record and any unrepresented parties via the Court's ECF System or by First Class U.S. mail on December 16, 2024.

s/Sara Krause

Case Manager

(810) 341-7850